**STATE OF ILLINOIS**
**ILLINOIS COMMERCE COMMISSION**

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| Illinois Commerce Commission | ) | |
| On its Own Motion | ) | |
| | ) | Docket No. 01-0662 |
| Investigation concerning Illinois Bell | ) | |
| Telephone Company's compliance | ) | |
| With Section 271 of the | ) | |
| Telecommunications Act of 1996 | ) | Phase 2 |

# PHASE 2 REBUTTAL AFFIDAVIT OF KAREN KINARD

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| STATE OF VIRGINIA | ) | |
| | ) | SS |
| COUNTY OF LOUDOUN | ) | |

I, Karen Kinard, being first duly sworn on oath, state as follows:

1. My name is Karen Kinard and I am employed by MCI WORLDCOM Network Services, Inc., a subsidiary of WorldCom, Inc., as a Senior Staff Member within the Incumbent Local Exchange Carrier ("ILEC") Performance Advocacy group of WorldCom's National Carrier Management & Initiatives organization.

2. The attached Phase 2 Rebuttal Affidavit was served on all active parties to Docket 01-0662 via e-mail on March 12, 2003.

3. The attached Phase 2 Rebuttal Affidavit was prepared by me or under my direction and control and is based on my personal knowledge.

4. I hereby swear and affirm that the statements contained in the attached Phase 2 Rebuttal Affidavit are true and correct, to the best of my knowledge, information and belief.

Further affiant sayeth not.

Karen Kinard

Karen Kinard

SUBSCRIBED AND SWORN to
before me this 24 day of March, 2003.

Heidi L. Holko

Notary Public

My commission expires on Nov. 30, 2004.

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**ILLINOIS COMMERCE COMMISSION**

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# PHASE 2 REBUTAL AFFIDAVIT OF KAREN KINARD

## ON BEHALF OF WORLDCOM, INC.

**WORLDCOM EX. 7.1**

March 12, 2003

I, Karen Kinard, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

1. My business address is 22001 Loudoun County Parkway, G3-2-571, Ashburn, Virginia 20147. I am employed by MCI WORLDCOM Network Services, Inc. ("MCI" or "WorldCom") as a Senior Staff Member within the Incumbent Local Exchange Carrier ("ILEC") Performance Advocacy group of WorldCom's National Carrier Management & Initiatives organization. I am responsible for performance measurement and remedy plan policy development and advocacy. I participated in the merger condition 30 collaboratives that led to the Illinois Commerce Commission's consideration of the performance measurements and remedy plan adopted in the 01-0120 proceeding. I am the same Karen Kinard who filed an Initial Affidavit in Phase 2 of this proceeding on February 21, 2003.

**Purpose and Scope of Affidavit**

2 In this affidavit, I will: (1) address the reply affidavit of Mr. James Ehr regarding issues raised in my initial affidavit; and (2) support staff's primary recommendation that the 01-0120 remedy plan should be the plan adopted in this proceeding to ensure against backsliding on wholesale services once SBC Illinois gains entry in the Illinois long distance market.

**A. Provisioning Accuracy**

3. Mr. Ehr does not deny the flaws I noted with SBC Ameritech's Performance Measure ("PM") 12, covering Ordering Provisioning accuracy, even though SBC Texas has corrected both flaws (starting with the Local Service Request ("LSR") for comparisons and showing non-flow through results separately from flow through results) in the last two six month reviews. It is the Texas metric 12.1 and not an additional metric that WorldCom seeks to have adopted in Illinois to replace PM 12 and improve the ability of this metric to capture errors that manual handling may cause to be mistyped from the LSR into the SBC SORD system.

4. Instead, Mr. Ehr claims that the Installation Trouble Report metrics for various products captures these types of errors. These metrics only capture network troubles, not those of a missing feature or the wrong feature that often is a problem with re-keying errors. Sometimes the error is not known by the customer to report as a trouble until they take a look at the bill they are paying and see that something they did not order is on the bill. It would not be the kind of trouble that would be entered as a maintenance trouble picked up by a "Trouble After Install" metric.

**B. Line Loss Reports**.

5. WorldCom recently learned that SBC Illinois apparently never included lines lost from a Competitive Local Exchange Carrier ("CLEC") that return to SBC Illinois

(also known as "winbacks") in the line loss performance measures old Michigan 13 or new Michigan 13 ("MI 13") and Michigan 13.1 ("MI 13.1") metrics. If true, this is shocking news that SBC Illinois has interpreted that CLECs only intended these metrics to cover CLEC-to-CLEC migrations. CLECs never limited the kinds of line loss this metric would cover. These metrics were intended to cover every case where a CLEC receives a line loss report, including the large category of customers that convert back to SBC Illinois. SBC should not be allowed to find a loophole out of fully reporting all line losses. There is no basis upon which a rational party could consider winbacks to be an exclusion. The current metrics also do not apparently pick up missing line losses that are not received at all during the month. Only if the CLEC is advised to have SBC Illinois reflow the self-reported line loss reports for it would these metrics capture any impact from CLEC-initiated efforts to have SBC Illinois find missing line loss reports. SBC Illinois at the very least should be required to restate these metrics for the period being examined to include the wrongly excluded winback loss notices, though the Commission would be fully warranted in requiring PMs MI 13 and MI 13.1 to be tested by BearingPoint, as recommended by WorldCom witness Sherry Lichtenberg in her rebuttal affidavit.

### C. <u>Work Completion Notices</u>

6. Despite Mr. Ehr's accurate explanation that these notices cover repair and not provisioning completions, I must disagree with his claim that this is not an

important notice. The creation of this metric was a compromise to changing the end point for the "Mean Time to Restore and Repair Commitments Met" metrics, which were originally adopted in Michigan. This compromise stemmed from Michigan's efforts to replace previously existing metrics with the SBC Texas metrics adopted in other SBC Midwest states as conditions to the approval of the merger between SBC and Ameritech. This compromise was exported for reporting in the four other SBC Midwest states in order to have uniformity in the metrics and in Operations Support Systems ("OSS") testing.

7. These notices are needed to help the CLEC quickly pick up on whether SBC Illinois has put down a trouble as closed when the CLEC's affected customer still is having the problem. It is just as critical, if not more so, for CLECs to have timely notice of when SBC Illinois closes a trouble ticket in case the CLEC needs to question that closing in light of other immediate facts.

### D. <u>Billing Metrics</u>

8. If the billing errors that WorldCom has discovered (*see* Rebuttal Affidavit of WorldCom witness Sherry Lichtenberg) are any indication of parity on billing accuracy in Illinois, as Mr. Ehr claims, then the commission should immediately begin a proceeding to promote retail billing accuracy. In fact, seeing the millions SBC Illinois can overcharge CLECs makes my belief all the more stronger that per occurrence/per measure remedies as set forth in the 01-0120 plan are the only

sanctions that might even come close, if any would, to ensuring that SBC Illinois provides minimally adequate wholesale service quality after it receives approval to provide in-state interLATA services pursuant to Section 271 of the Telecommunications Act of 1996 ("TA96"). It can take back with one period's worth of billing errors all the remedies it paid to WorldCom and likely all the CLECs during a six month period. This is unacceptable and strong detection and enforcement teeth are needed to ensure that this does not happen again.

9. As for SBC Illinois' claims that the changes to the metric made in the current six month review will end its repeated failures for metric PM 17, that still is yet to be seen. CLECs rejected one change in particular that SBC Illinois said it needed 10 and subsequently 5 extra days for getting recurring and nonrecurring charges on the next bill after they are incurred for UNE-P and line sharing customers. The failure to gain this inappropriate change may continue to cause SBC Illinois to fail this metric if no other operational changes are made to improve performance. This metric is critical to ensuring that bills can be more easily audited by the CLEC to ensure that its costs are not more than anticipated in pricing its services.

### E. <u>UNE-P Business Field Work Missed Appointments</u>

10. Mr. Ehr's further explanation of reason for this failure as well has how and when it will be fixed is appreciated. I was concerned that Mr. Cotrell was not aware of this problem with SBC Illinois' OSS systems at the time of the February 13,

2003, workshop/hearing as I had assumed his organization would have the main role in fixing the problem. I hope to see no further problems with PM 29 for this disaggregation after the March report is received by CLECs at the end of April.

### F. MI 13.1 Line Loss Average Delay and MI 12 Service Error Correction Remedies

11. First of all, WorldCom disagrees that MI 13 is the only metric that needs to be remedied to ensure that line loss reports are supplied in a timely fashion, for all losses, including winbacks by SBC Illinois.

12. WorldCom has had many problems with missing line loss reports in the SBC Midwest region in the past and continues to have line loss problems, a point on which WorldCom witness Ms. Lichtenberg elaborates in her rebuttal affidavit. WorldCom has raised these issues in the various 271 proceedings pending throughout the region, including here. Other CLECs, such as Z-Tel, have filed complaints in Illinois and other states because of untimely, inaccurate and unreliable line loss performance.[1] As previously noted, on February 5, 2003, WorldCom opened trouble ticket 10505102 with SBC regarding 3,000+ missing line loss notifications ("LLNs") in the SBC Midwest region since January 31, 2003. These missing LLNs appear to have been caused by an unannounced change to the delimiter on the LLNs transmitted to WorldCom.

[1] *See Z-Tel Communications, Inc. v. Illinois Bell*, Illinois Commerce Commission d/b/a Ameritech Illinois, Order, Docket No. 02-0160, issued May 8, 2002.

13. Subsequently, the United States Department of Justice ("DOJ") filed a brief with the FCC stating that it could not support SBC Michigan's Section 271 application in part due to line loss notification problems:

> CLEC commenters vigorously argue that SBC's performance in issuing line loss notifications has been incomplete, untimely, and unreliable. The issue was similarly argued before the Michigan PSC, which noted the progress in the area made by SBC. Nevertheless, the Michigan PSC noted SBC's history of problems in this area. Until more experience is gained, the Michigan PSC observed, it "cannot assume that a trouble free environment will now exist." The Michigan PSC responded to this uncertainty by requiring SBC to submit a plan that identifies a series of specific improvement measures.
>
> The Department shares the Michigan PSC's concerns, and believes that the Commission should carefully examine SBC's final improvement plan. Precise delivery of line loss notifications is vital for a healthy competitive environment in Michigan. Line loss notifications inform a CLEC when its customers have left for other carriers, either other CLECs or SBC. Unless timely notifications are sent, the CLEC must assume that it still provides service to the customers in question. It will thus bill its now former customers for the time in which it had been replaced. The new carriers also bill the same customers for the service they actually provide, and the customers will be double-billed. The customers will naturally blame the former carrier. Such double-billing, as the Michigan PSC observes, "may have serious negative effects on the reputations of … competitive providers." CLECs also consume resources investigating and fixing these avoidable problems.[2]

14. Most recently, on March 6, 2003, SBC issued Accessible Letter CLECAMS03-019, notifying CLECs of a 5-state line loss notification problem in which line loss

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[2]*See* Evaluation of the United States Dept. of Justice, *In the Matter of Application by SBC Communications Inc., Michigan Bell Telephone Co., and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan*, FCC WC Docket No. 03-16 (filed February 26, 2003), at 8-9 ("DOJ MI Eval.") (footnotes omitted).

notifications "were sent on lines that CLECs did not lose," and which impacted thousands of transactions over a several-month period.[3]

15. These and other recent problems demonstrate that additional remedies are clearly required to make sure that SBC does not retrench on its dedication of resources to addressing CLEC complaints about missing and erroneous line loss reports. The MPSC recently agreed:

> The Commission concludes that WorldCom's proposal should be adopted. Although both PM MI 13 and PM MI 13.1 relate to line loss notifiers, they do not measure the same thing. WorldCom proposes that remedies be imposed for PM MI 13.1 when the average delay is more than four days, which PM MI 13 measures the percentage of notifications returned within one business day. *Because line loss notification is so important to the development of a competitive market (due to the effect on customer relations) and because line loss notification has been a continuing problem, the Commission concludes that it is appropriate to impose remedies for both PM MI 13 and PM MI 13.1.*[4]

16. This Commission should join the Michigan Commission in making PM MI 13.1 a remedied measure. I also support staff's proposal (Weber) to increase the remedies for PM 13 to medium levels.

17. While the Michigan Public Service Commission did not grant the part of WorldCom's petition seeking remedies for MI 12, WorldCom still implores the Illinois commission to do so. I would like to point out that because of the

[3] *See* SBC Accessible Letter CLECAMS03-019, issued March 6, 2003, eff. March 6, 2003.

structure of that proceeding in Michigan, WorldCom did not have a chance to respond to SBC's claims that this metric was duplicative of PM 17 Billing Completeness. As explained in my Initial Affidavit, MI 12 is designed to motivate the timely update of the CLEC as the owner of the customer and PM 17 is designed to motivate that recurring and nonrecurring charges incurred by the CLEC show up on the next bill after order completion. Only extremely bad performance on the first metric for orders completed near the end of the billing cycle would cause any overlap at all. In many instances, one metric could be missed but not the other, as I explained in my Initial Affidavit.

### G. <u>Data Integrity</u>

18. Mr. Ehr goes on at great length as to how the errors and restatements required by the findings of two auditors and under the pressure of 271 proceedings will not occur again, even though the changes from the last six month review have not been implemented yet and large volumes of data are being moved to new systems. I am sure this commission and the other former Ameritech state commissions will persist until even the new BearingPoint data integrity exceptions 187 and 188 (issued February 18, 2003) on retesting clear SBC Illinois integrity failures for the numerous metric areas they cover.

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[4] *See* MPSC Order at 4 (emphasis added).

19. If Mr. Ehr truly wishes to stand by the accuracy of future reporting, he should agree to an additional penalty for the period in which any future reporting is found to require restatement as a result of subsequent annual metric audit failures. Such remedies would be a crucial stick available to protect CLECs from any incentive for SBC Illinois to engage in another long period of flawed reporting and restatements as were discovered in this proceeding. This massive improvement effort undertaken by SBC likely was only generated because of required compliance with a thorough metric audit to gain the carrot of approval of long distance market entry. The remedies, however, would continue after the 271 incentive goes away.

20. The remedy for revisions of inaccurate reporting should be similar to that adopted by the New Jersey Board of Public Utilities in accepting its staff recommendation that in addition to remedies (similar to SBC's) for late and incomplete reports, daily fines associated with revisions due to reporting error and for lack of access to underlying data should also be imposed:[5]

> 1. Incomplete or revised reports or reports found to require revision – if performance data and reports are incomplete, or if previously reported data are revised, then VNJ should shall be liable for payments of $1,000 to a state fund for every twenty-four (24) period, or part thereof, day past the due date for delivery of the original reports.
>
> 2. Inability of a CLEC to access requested detailed data - If a

[5] The New Jersey Board of Public Utilities' January 10, 2002, order adopting and incentive plan in docket nos. TX95120631 and TX98010010, *In the Matter of the Investigation Regarding Local Exchange Competition for Telecommunications Services*.

> CLEC cannot access its detailed data underlying VNJ's performance reports due to failures under the control of VNJ, then VNJ should shall pay $1,000 per for every twenty-four (24) period, or part thereof, day (or portion thereof) toa state fund until such data are made available[6].

### H. <u>ICC's 01-0120 Plan v. SBC Illinois' So-Called Compromise Plan</u>

21. Mr. Ehr only offers the claim of improved overall performance as the reason that the Commission should adopt the substitute remedy plan SBC Illinios offers as the "compromise" plan. WorldCom has always viewed it as the norm that an Incumbent Local Exchange Carrier's ("ILEC's") wholesale performance would improve right before 271 applications are filed. Just as children behave better before Christmas. It's after the presents have arrived that regulators and parents have to derive a strong replacement incentive to avoid backsliding on that improved behavior.

22. Whether SBC Illinois improved performance improvement was based on the 01-0120 plan or its desire to win 271 approval will be hard to be determine. But only the 01-0120 plan appears to have the teeth necessary to avoid the backsliding that WorldCom always has feared would occur. I offer for example that the New York Performance Assurance Plan has some very high remedies paid out to all CLECs for key metrics. After paying $2.5 million per quarter for the first four quarters upon 271 approval -- for missing its flow through performance

[6] See page 8 of October 2001 staff recommendation adopted in New Jersey Board of Public Utilities Order mentioned above. The New Jersey BPU recently fined Verizon New Jersey more than $9 million for revised, incomplete and missing reports.

benchmarks of 95% for Achieved Flow Through (covering only orders designed to flow through) or 80% for Total Flow Through (all electronically submitted orders) -- Verizon fixed its flow through problems and has not paid this high remedy since. That is the goal of the self-executing remedies that CLECs have advocated to prevent 271 backsliding, to create such a strong fear of sanction for poor performance that the ILEC does not miss the metric at all or for long. SBC's best option for lowering its remedy risk is to provide good service. CLECs certainly have agreed to exclusion of anything they might do to cause a failure in the metric rules. The 01-0120 plan is not as severe as the New York plan is, particularly for key metrics. Yet SBC Illinois' persistent efforts to lower the enforcement bar indicate that it is looking for a remedy plan that is a tolerable cost of doing business and not one that promotes performance to levels that require no remedy payments whatsoever. Improved service and not end-run remedy plans should be the right-thinking ILECs approach to reducing its remedy payments.

23. The Staff hybrid plan's addition of the step-down and gap closure components of the "compromise" plan improve on the 01-0120 plan and might be worth the trade off of some lower remedies. But overall WorldCom would advocate, as Staff did as its primary recommendation, that the Commission stick with the 01-0120 plan that it developed after hearing all sides to the issues at hand. The trade-offs of the Staff's hybrid plan might be worth looking at during a review at some point down

the road once adequate experience is gained by CLECs operating under the 01-0120 plan, particularly an adequate period of operation after SBC Illinois receives 271 approval. In light of the magnitude of billing errors found by WorldCom on its wholesale bills, and this just encompassing one metric domain, the 01-0120 remedies may not even provide an adequate incentive. CIMCO Communications Inc.'s affidavit (page 3) also makes a similar case:

> I will not attempt to justify each and every remedy figure in any of the plans before this Commission. What I can do, however, is to provide a sense of the costs we incur when SBC fails to deliver at the level of service to which they have previously agreed. Those costs include the salaries and benefits of personnel that must resubmit orders, follow-up with SBC on orders, track and report problems internally and to SBC, communicate with our customers on delays or generally spend time that would not have been spent if SBC had met its performance obligations. That extra work costs my company approximately $112,400 per month. Additionally, CIMCO must issue credits to customers because of SBC's problems such as ordering errors or incorrect information. Customer refunds due to SBC error costs CIMCO approximately $10,000 per month. Finally, errors and delays cost CIMCO revenue and margin opportunities. This costs CIMCO approximately $5,000 per month.
>
> Additionally, there is always the very real chance that we may lose a customer due to delays caused by SBC's failures. While such costs are difficult to calculate, I would estimate that we have lost customers, either in part or in total, with monthly revenues of $36,000 due to SBC failures.

24. From Staff witness Melanie Patrick's initial affidavit, it is vividly clear that Commission Staff sees many of the same problems, particularly with the low remedies and indexing methodology, that I raised in my Initial Affidavit opposing adoption of the so-called compromise plan offered by SBC Illinois.

25. Ironically, while Mr. Ehr attacks Staff metric failure reviews (Staff witness Sam McClerren) for not looking at the specifics of the severity of the failure and the volumes involved in citing areas of noncompliance, SBC Illinois wants to use an even broader brush to avoid focusing remedies on failed areas of performance or the degree of failure experienced by individual CLECs. Mr. Ehr does not see the analogy between its 92% rule and staff's 90% rule that he criticizes.

26. I agree with Staff witness Ms. Patrick that the compromise plan takes the focus away from individual metric compliance (paragraph 46) and that an individual CLEC suffering harms do not care that its remedies are low because most other CLECs did not suffer as many failures (paragraph 68). Mr. Ehr may call "hypothetical," my concerns (and also Ms Patrick's) that this plan would not protect against discrimination targeted to individual CLECs or individual metrics, but he has not refuted that the 01-0120 plan's structure makes the potential for such gaming virtually impossible. Under the 01-0120 plan, no matter how many metrics are passed for all CLECs, individual failures and cumulative harms to individual CLECs are the focus. Similar to Staff's and WorldCom's comments, AT&T witness Michael Kalb's initial affidavit also notes the many deficiencies that make the SBC Illinois' compromised plan fall short of what the Federal Communications Commission ("FCC") criteria are for judging such plans.

**Conclusion**

27. For all of the foregoing reasons, I again respectfully submit that the 01-0120 plan adopted by the Illinois Commerce Commission is the plan that the Commission should endorse for Section 271 purposes. I still firmly believe that no sufficient remedy plan can ever be adopted with SBC Illinois on a voluntary basis. As I proposed in my initial affidavit, the Commission should condition its endorsement of SBC Illinois' federal 271 application on SBC Illinois' withdrawal of its appeal of the Commissions authority to adopt "non-voluntary" plans like the 01-0120 plan. In addition, the Commission should ensure that SBC Illinois adopts the Texas Mechanized Provisioning Accuracy metric PM 12.1 and implements a better measure of billing accuracy than the one it has now. At a minimum, it also needs to restate the line loss metric reports to include winback losses to SBC Illinois, as CLECs have always considered covered by the existing and latest six-month review metrics, and SBC Illinois should be required to add metrics MI 12 and MI 13.1 to its remedy plan as proposed by WorldCom and AT&T. Further, SBC Illinois should stand behind the integrity of its future metric reporting by agreeing to a penalty for inaccurate as well as the incomplete and missing report remedies already in 01-0120 and its "compromise" plan.

28. This concludes my affidavit.